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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

 Plaintiff,

 v.
 APPROXIMATELY \$183,820 IN UNITED
 STATES CURRENCY AND \$34,000 IN
 UNITED STATES CURRENCY,

 Defendant.

No. 09-CV-3963-EMC

JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT
 AND
~~[PROPOSED]~~ ORDER TO
 RESCHEDULE CMC

I. Jurisdiction

This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and 1355; and Title 21, United States Code, Section 881.

II. Brief Case Description

This is a civil forfeiture action. The government contends there is sufficient evidence to show the defendant currency was seized as money furnished or intended to be furnished by a

1 person in exchange for a controlled substance, or money traceable to such an exchange, or money
2 used or intended to be used to facilitate a violation of Title 21, United States Code, Chapter 13,
3 Subchapter I, and is thus subject to forfeiture.

4 Claimant, Gary Ciciriello, denies the claims made by the United States and asserts that
5 the government has failed to state a claim upon which relief can be granted and that the property
6 was seized in violation of Mr. Ciciriello's right to be free from unlawful searches and seizures.

7 **III. Service/Parties to the Action**

8 All persons known to have an interest in the defendant property have been served,
9 including Peter Flax, Carl Grimm, Gary Ciciriello and Mr. Ciciriello's attorney, Joseph Elford.
10 Mr. Elford filed a verified claim and answer on behalf of Mr. Ciciriello on September 25, 2009,
11 and October 15, 2009, respectively. To date, no other claims have been filed.

12 **IV. Principal Factual and Legal Issues**

13 The principal factual and legal issues in dispute are: (1) whether claimant Gary Ciciriello
14 can prove that the government failed to state a claim upon which relief can be granted or that the
15 defendant property was seized in violation of claimant's right to be free from unlawful searches
16 and seizures; and (2) whether the government can establish by a preponderance of the evidence
17 that the defendant currency is money furnished or intended to be furnished by a person in
18 exchange for a controlled substance, or money traceable to such an exchange, or money used or
19 intended to be used to facilitate a drug violation of Title 21, United States Code, Chapter 13,
20 Subchapter I.

21 **V. Anticipated Motions**

22 The related criminal investigation of Mr. Ciciriello is on-going and being reviewed by
23 local law enforcement and the local prosecutors's office; therefore, the parties recommend a
24 30-day continuance of the Case Management Conference. If the local authorities pursue
25 prosecution of Mr. Ciciriello, the United States will file a 18 U.S.C. §981(g)(1) motion to stay
26 federal civil forfeiture proceedings. Additionally, the government may file a motion to dismiss
27 the claimant's §1983 counter-claim as improperly brought in this in rem forfeiture action.

VI. Relief/Damages

The government seeks a judgment of forfeiture of the defendant currency. Claimant seeks return of the defendant currency, interest, attorney's fees, damages and attorney's fees for 42 U.S.C. §1983 violations, and other such relief that is just and equitable.

VII. Settlement

The parties have briefly discussed settlement but no settlement has been reached at this time.

VIII. Discovery

Both parties anticipate to propound discovery in this case (interrogatories, document requests and depositions); however, the discovery time line will be determined by the Court and the possible request for a stay pending the results of the open criminal investigation of claimant Ciciriello.

IX. Alternative Means of Disposition

At this time the parties do not request reference to arbitration or to a United States Magistrate Judge for trial.

X. Pretrial/Trial Issues

At this time the parties have not yet discussed any trial issues.

XI. Class Action

This is not a class action.

XII. Related Cases

At this time no related cases have been filed.

DATED: February 24, 2010

_____/S/_____
NATALIE K. WIGHT
Special Assistant United States Attorney

DATED: February 24, 2010

_____/S/_____
JOSEPH D. ELFORD
Attorney for Claimant Gary Ciciriello

[PROPOSED] ORDER

Pursuant to the stipulation of the parties in the Joint CMC Statement and for good cause shown, the Case Management Conference currently scheduled for Wednesday, March 3, 2010, at 2:30 p.m., is hereby vacated, and is continued until 4/21/10 at 2:30 p.m. A joint cmc statement shall be filed by 4/14/10.

IT IS SO ORDERED.

Dated: 3/1/2010

